

**OPINION
51-186**

January 8, 1951 (OPINION)

TAXATION

RE: Sales Tax

Your letter of December 29, 1950, has been received.

You would like to know whether or not the members of the basketball team of Mayville Teachers College are exempt from the state sales tax on their meals purchased in your restaurant.

Rule No. 17 of the North Dakota Sales Tax Rules and Regulations provides in part:

The sale of meals, lunches, etc. by hotels, restaurants and other eating places, such as clubs, boarding houses and dining rooms and the like, are sales of tangible personal property to purchasers for consumption. * * *",

and consequently are taxable.

Section 57-3903, subsection 6, of the 1949 Supplement, provides as an exemption to the sales tax laws all sales of tangible personal property to the state of North Dakota or any of its institutions.

It is our opinion that sales to qualify under this exemption must be made "to and for the benefit" of the institution.

Although athletics is a very real part of the state college programs, it nevertheless is an extra-curricular activity. We believe that the sale of food by a public eating place to the members of a state college basketball team is a sale to and for the benefit of the individual players and not sales which could properly be classified as "to and for the benefit of the institution."

Consequently, such sales are taxable under the North Dakota Retail Sales Tax Law.

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